

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x No. 23-CV-3825

MALIK MCCAIN,

Plaintiff,

NOTICE OF REMOVAL

-against-

THE CITY OF NEW YORK; METROPOLITAN
TRANSPORTATION AUTHORITY; OFFICER JOHN
DOE; OFFICER JANE DOE; WAILOK WONG, SHIELD
NO. 12002; JASON F. FARRELL, SHIELD NO. 19867,

Defendants,

-----x

TO: The Clerk of Court and all parties of record.

Defendants Metropolitan Transportation Authority (“MTA”), through its undersigned
counsel, hereby states:

1. Defendants seeks to exercise their right, pursuant to 28 U.S.C. Sections 1441 and 1446 to
remove this state court civil action to this Court from the Supreme Court of the State of New
York, County of Queens, in which it is pending under the name and style of: *Malik McCain v.*
The City of New York; Metropolitan Transportation Authority; Officer John Doe; Officer Jane
Doe; Wailok Wong, Shield No. 12002; Jason F. Farrell, Shield No. 19867, Index Number
708237/2023.

2. The grounds for removal of this action are:

a. This is a civil action in which the District Courts of the United States have been
given original jurisdiction in that it arises under the Constitution and laws of the United
States within the meaning of 28 U.S.C. Section 1331.

b. Specifically, as appears from the Complaint (annexed hereto as Exhibit A),
Plaintiff alleges that on August 6, 2021, between 8:00 and 8:30 a.m., he was assaulted by
an employee of Pickles & Pie Food Market & Deli, located at 202 Beach 116th Street,

Queens, New York 11694; two unnamed “MTA police” officers (John and Jane Doe Defendants) who had been at a nearby bus station then came in and threw Plaintiff against the wall, despite his arguments that he was the victim; those officers called NYPD; Defendant NYPD Officers Wailok Wong and Jason F. Farrell arrived and arrested both Plaintiff and the deli employee, forcefully throwing Plaintiff into the NYPD vehicle; after which time the criminal charges against him were dismissed and sealed. The Complaint explicitly invokes as its causes of action, claims pursuant to 42 U.S.C. Section 1983 for excessive force, false arrest, prosecution without probable cause, and due process violations, in violation of Plaintiff’s rights under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution. It also invokes *Monell* claims against the City of New York.

- c. The Complaint does not invoke any state law causes of action, and the exercise of supplemental jurisdiction would not be required.
- d. Therefore, removal of this action to this Court is proper under the provisions of 28 U.S.C. Section 1441(a).

3. Plaintiff served the Summons with Verified Complaint, which is his initial pleading, on April 25, 2023, by hand delivery on the MTA. This Notice of Removal is thus filed within 30 days of the MTA’s receipt of such initial pleading and therefore is timely filed under 28 U.S.C. Section 1446(b).

4. In accordance with 28 U.S.C. Section 1446(a), the following documents are attached as exhibits to this Notice and incorporated by reference:

Exhibit A - the Summons and Verified Complaint, filed on April 20, 2023, in the Supreme Court of the State of New York, County of Queens, under Index Number 708237/2023.

Exhibit B - the Affidavits of Service Plaintiff filed on April 27, 2023, in the Supreme Court of the State of New York, County of Queens.

Exhibit C - Defendant MTA's Verified Answer to the Verified Complaint, filed on May 12, 2023, in the Supreme Court of the State of New York, County of Queens.

Exhibit D – Notice of Removal filed on May 22, 2023, in the Supreme Court of the State of New York, County of Queens pursuant to 28 U.S.C. Section 1446(d).

No other process, pleadings or orders have been filed in this action prior to its removal.

5. All defendants are hereby asked to consent to removal, in accordance with 28 U.S.C. Section 1446(b), and all identified and non-fictitious parties have so consented. Their consent is attached as exhibits to this Notice and incorporated by reference:

Exhibit E - Defendant City of New York's consent to removal.

Exhibit F - Defendant Wong's consent to removal.

Exhibit G - Defendant Farrell's removal.

6. No fictitious defendants have yet been identified in the action pending in the Supreme Court of the State of New York, County of Queens, nor have any appeared in that action.

WHEREFORE, this Court should accept jurisdiction over this action and place it on this Court's docket for further proceedings as though it had been originally commenced in this Court.

Dated: New York, New York
May 22, 2023

Respectfully submitted,

Paige Graves
General Counsel
METROPOLITAN
TRANSPORTATION AUTHORITY

By:



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Defendant Officer John Doe

Defendant Officer Jane Doe